

ESTTA Tracking number: **ESTTA608465**Filing date: **06/06/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Zenith-Mart Inc.
Granted to Date of previous extension	06/07/2014
Address	30 Wall St, 8th Floor New York, NY 10005 UNITED STATES

Attorney information	Adam S. Weiss Polsinelli PC 161 N. Clark Street, Suite 4200 Chicago, IL 60601-3316 UNITED STATES aweiss@polsinelli.com, kesullivan@polsinelli.com, uspt@polsinelli.com Phone:312-873-3644
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Applicant Information

Application No	86067598	Publication date	04/08/2014
Opposition Filing Date	06/06/2014	Opposition Period Ends	06/07/2014
Applicant	Oletu, Godswill H. Suite# 2-120 Hackensack, NJ 07601 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2008/00/00 First Use In Commerce: 2008/00/00

All goods and services in the class are opposed, namely: The bringing together, for the benefit of others, of a variety of goods and services, enabling customers to conveniently view and purchase those goods and services from an Internet web site particularly specializing in the marketing of the sale of goods and services of others


Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	void ab initio

Marks Cited by Opposer as Basis for Opposition

U.S. Application	86156478	Application Date	01/02/2014
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ZENITHMART		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2012/04/09 First Use In Commerce: 2012/10/21 On-line retail store services featuring electronics, computers, jewelry, shoes, automotive and tools, home appliances, health and beauty products		

U.S. Application No.	86172398	Application Date	01/22/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ZENITHMART		
Design Mark			
Description of Mark	The mark consists of a design graphics stylized one word "ZenithMart" with "Z" underlining the "ZenithMart" to the right.		
Goods/Services	Class 035. First use: First Use: 2012/04/09 First Use In Commerce: 2012/10/21 On-line retail store services featuring electronics, computers, televisions, home appliances, jewelry, tablet PCs, shoes, automotive and tools, health and beauty products		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ZENITHMART		
Goods/Services	On-line retail store services featuring a variety of products		

Attachments	86156478#TMSN.jpeg(bytes) 86172398#TMSN.jpeg(bytes) ZENITHMART -- Notice of Opposition.pdf(340885 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Adam S. Weiss/
Name	Adam S. Weiss
Date	06/06/2014

NOTICE OF OPPOSITION

Zenith-Mart Inc. (“Opposer”) believes that it will be damaged by the registration of the ZENITHMART trademark, Application Serial No. 86/067,598 (the “Application”), by Godswill H. Oletu d/b/a Zenithmart, a sole proprietorship (“Applicant”) and opposes registration of this mark upon the following grounds:

1. Applicant seeks to obtain registration on the Principal Register of the mark ZENITHMART (“Applicant’s ZENITHMART Mark”) as a trademark for use in connection with “The bringing together, for the benefit of others, of a variety of goods and services, enabling customers to conveniently view and purchase those goods and services from an Internet web site particularly specializing in the marketing of the sale of goods and services of others” in International Class 35 (“Applicant’s Services”).
2. At least as early as October 21, 2012 and prior to the filing date of Applicant’s Application, Opposer adopted, has continuously used and currently uses the ZENITHMART trademark in commerce in connection with “On-line retail store services featuring electronics, computers, jewelry, shoes, automotive and tools, home appliances, health and beauty products” and “On-line retail store services featuring electronics, computers, televisions, home appliances, jewelry, tablet PCs, shoes, automotive and tools, health and beauty products” (collectively, “Opposer’s Services”). Opposer owns the domain names zenith-mart.com and zenithmart.us through which it operates its online retail store services.
3. Opposer filed an application for registration of the word mark ZENITHMART (Serial No. 86/156,478) for use in connection with “On-line retail store services featuring electronics, computers, jewelry, shoes, automotive and tools, home appliances, health and beauty products” as well as for a stylized ZENITHMART design mark (Serial No. 86/172,398) for use in

connection with “On-line retail store services featuring electronics, computers, televisions, home appliances, jewelry, tablet PCs, shoes, automotive and tools, health and beauty products” on January 2, 2014 and January 22, 2014, respectively (the trademark applications collectively referred to as “Opposer’s Applications” and the marks collectively referred to as “Opposer’s ZENITHMART Marks”).

4. Petitioner’s Applications have been suspended by the Examining Attorney due to the prior filed Application for Applicant’s ZENITHMART Mark.

5. Opposer has expended substantial monies in marketing, advertising, and promoting Opposer’s ZENITHMART Marks and, through such sales and advertising, has generated substantial goodwill and customer recognition in such marks.

6. Opposer has derived substantial revenues from its sales of Opposer’s Services under Opposer’s ZENITHMART Marks.

7. As a result of the marketing, promotion and sales of Opposer’s Services under Opposer’s ZENITHMART Marks, such services have come to be, and now are, well and favorably known under Opposer’s ZENITHMART Marks as high quality, customer friendly, reliable online retail store services originating from Opposer. Opposer’s ZENITHMART Marks are distinctive of Opposer’s Services and are well-known, and valuable goodwill has been built up in Opposer’s ZENITHMART Marks. Such goodwill has been built up long before the filing date of Applicant’s ZENITHMART Mark set forth in the Application.

8. Applicant’s filing of the Application and any subsequent use of Applicant’s ZENITHMART Mark are without the consent or permission of Opposer.

9. On information and belief, Applicant's filing of the Application and any subsequent use of Applicant's ZENITHMART Mark have been with knowledge of the extensive prior use by Opposer of Opposer's ZENITHMART Marks.
10. Applicant's ZENITHMART Mark is identical or nearly identical to Opposer's ZENITHMART Marks.
11. Applicant's Services are nearly identical or closely related to Opposer's Services.
12. Applicant's ZENITHMART Mark is confusingly similar to Opposer's ZENITHMART Marks, and the registration thereof by Applicant in connection with Applicant's Services is likely to cause confusion, mistake or deception that Applicant's Services are those of Opposer or are otherwise endorsed, sponsored, or approved by Opposer, or cause confusion, mistake or deception as to the affiliation, connection or association between Applicant and Opposer.
13. If Applicant is permitted to use and register Applicant's ZENITHMART Mark in connection with Applicant's Services, confusion in trade resulting in irreparable damage and injury to Opposer would be caused by reason of the similarity between Applicant's ZENITHMART Mark and Opposer's ZENITHMART Marks. Persons familiar with Opposer's ZENITHMART Marks would be likely to use Applicant's Services believing that such services are provided by, endorsed by, or associated with Opposer, which is not the case. Furthermore, any lack of quality or issues with Applicant's Services marketed under Applicant's ZENITHMART Mark would necessarily reflect upon and seriously injure the reputation which Opposer has established for Opposer's Services under Opposer's ZENITHMART Marks.

14. If Applicant is granted registration for Applicant's ZENITHMART Mark as shown in the Application, Applicant would thereby obtain a *prima facie* exclusive right to use such mark, and such registration would be the source of irreparable damage and injury to Opposer.

15. Indeed, in late August, 2013, Opposer contacted Applicant, as the owner of the domain name zenithmart.com, to inquire about acquiring such unused domain name from Applicant. The zenithmart.com domain name was parked and not in use and, on information and belief, the ZENITHMART Mark was not in use in any manner whatsoever. To that end, Applicant admitted that it was not operating an online retail store at the domain names zenithmart.com or zenithmart.net. Applicant made reference to an alleged old use of these names in connection with online retail store services, but that it had ceased such use because the principal did not have the time to keep up with order fulfillment and stock updates with his regular job. Just a day or two before Applicant filed the Application, the principal of Applicant stated the following: "One of the many reasons, I have not started re-commercializing the zenithmart.com (sic) is because, am (sic) still trying to nurse to self-sustenance my other ecommerce ventures below in other (sic) to free up more time to rededicate easy where.... (sic)"

16. On information and belief, Applicant does not and never has used Applicant's ZENITHMART Mark in connection with Applicant's Services.

17. On information and belief, Applicant was not using Applicant's ZENITHMART Mark on or in connection with Applicant's Services at the time of filing the Application on September 18, 2013 and therefore the Application is void *ab initio*. *ShutEmDown Sports, Inc. v. Carl Dean Lacy*, 102 USPQ2d 1036 (TTAB 2012).

18. The specimens originally submitted with the Application merely displayed an image of a logo, as the Examining Attorney noted: "The specimen is not acceptable because it is merely a

photocopy of the drawing or a picture or rendering of the applied-for mark and does not show the applied-for mark in actual use in commerce in the sale or advertising of the services. Section 45 of the Trademark Act requires use ‘in the sale or advertising of services.’” On information and belief, the substitute specimens ultimately accepted by the Examining Attorney were not in use in commerce at least as early as the filing date of the Application, and Applicant’s declaration otherwise was patently false.

19. On information and belief, the first use dates stated in the Application are false or inaccurate.

20. On information and belief, to the extent Applicant ever claims to have made any use of Applicant’s ZENITHMART Mark, such alleged use was not in connection with Applicant’s Services. To the extent Applicant ever claims to have made an old use of Applicant’s ZENITHMART Mark in connection with some form of online retail store services, any such alleged rights had been abandoned. On information and belief, Applicant ceased all such alleged use of Applicant’s ZENITHMART Mark without intent to resume use. On information and belief, Applicant did not make any use of Applicant’s ZENITHMART Mark for a period of at least three (3) years and is presumed to have abandoned any alleged rights Applicant may have claimed in Applicant’s ZENITHMART Mark.

21. On information and belief, Applicant abandoned any alleged rights Applicant may have claimed to have in Applicant’s ZENITHMART Mark, prior to Opposer’s adoption of Opposer’s ZENITHMART Marks.

22. On information and belief, Applicant had no intention to resume use of Applicant’s ZENITHMART Mark in connection with online retail store services until after Opposer contacted Applicant in August 2013 and inquired about acquiring the zenithmart.com domain

name that was parked and not in use at the time of such correspondence. At such time, Opposer already had been using Opposer's ZENITHMART Marks in connection with Opposer's Services and already had built up valuable goodwill in such marks.

23. On information and belief, Applicant began offering its current online retail store services under Applicant's ZENITHMART Mark only after Applicant was contacted by Opposer about acquiring the zenithmart.com domain name and long after Opposer had begun using Opposer's ZENITHMART Marks in connection with Opposer's Services. On information and belief, Applicant's acts described herein were knowing and intentional.

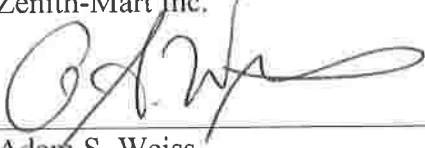
24. Notwithstanding the foregoing, on information and belief, any abandoned use described herein arguably was in connection with online retail store services, as Applicant does not and never has used Applicant's ZENITHMART Mark in connection with Applicant's Services.

PRAYER FOR RELIEF

WHEREFORE, Opposer prays that Application Serial No. 86/067,598 be rejected in connection with all services identified therein, and that the mark therein sought for such services be denied and refused.

Opposer submits herewith the requisite filing fee in the amount of \$300.00. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to our Deposit Account No. 501662. This Notice of Opposition is being filed electronically pursuant to the ESTTA system.

Dated: June 6, 2014

Zenith-Mart Inc.

By: _____
Adam S. Weiss
Tedd W. Van Buskirk
Karin E. Sullivan
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161 N. Clark Street, Suite 4200
Chicago, IL 60601-3316
Tel: (312) 873-3644

Attorneys for Opposer

CERTIFICATE OF FILING

I hereby certify that this Notice of Opposition was filed electronically through the TTAB's ESTTA (Electronic System for Trademark Trials and Appeals) system, on June 6, 2014.



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One of the Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the attached "NOTICE OF OPPOSITION" has been served upon Applicant by first class mail, postage prepaid, on June 6, 2014, addressed to the following (Applicant does not have an attorney of record):

Godswill H. Oletu
370 W. Pleasantview Ave. Suite 2-120
Hackensack, NJ 07601-8004

Applicant



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